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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,265

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On-Kuk Jon

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52706

7590

09/24/2009

IPLA P.A.

3580 WILSHIRE BLVD.

17TH FLOOR

LOS ANGELES, CA 90010

EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

09/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,265	Applicant(s) JON, ON-KUK	
	Examiner KRISTEN C. MATTER	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/18/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

The claims are objected to because they include reference characters which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Claim 1 is objected to because of the following informalities: in line 6, “a surface contacting” should be changed to "a surface for contacting" to avoid confusion of claiming human body parts (i.e., human skin), which is non-statutory subject matter. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giarretto (US 5,228,431) in view of Liaskos (US 5,454,778), Schamblin (US 3,481,326), and Crosley et al. (US 2,123,418).

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Regarding claim 1, Giarretto discloses an aspirator for promoting hair growth comprising a smooth helmet (10) for covering a human head; a tube (15) attached at an inner edge of the helmet for being inflated by air (column 7, lines 60-65); an air injection pump (14) attached to the helmet and connected with a hose (17) for inflating the tube (15); and an air hose (19) connected to a vacuum pump (20) that produces cyclic negative pressure profiles and thus inherently has an air switch mechanism and a connection means (50) for producing a vacuum inside the helmet. Although the pump/hose is shown as being attached to the back of the helmet as opposed to the front, examiner contends that absent a critical teaching and/or a showing of unexpected results from the location of attachment of the tube, where the hose/pump is attached to the helmet is an obvious design consideration to one of ordinary skill in the art depending on personal preferences for managing weight distribution for example.

Giarretto does not explicitly mention a filter with a plurality of small holes connected with the connection means (as discussed above with the hose (17), the location of the connection means being on an upper side of the helmet is similarly considered an obvious design consideration). Although it appears that Giarretto discloses a layer (30) with small holes that could be considered a filter in the broadest reasonable interpretation of the claims (see Figure 2, there is a layer with protrusions that lies on the inner side of where the vacuum is attached to the helmet at connector 50; there must be holes in order to allow the vacuum to be created on the scalp). In either case, Liaskos discloses an apparatus for producing a vacuum on the scalp and having a filter (10) for preventing the migration of foreign objects into the vacuum producing means, the filter would inherently have a plurality of small holes in order to allow air to pass but not foreign objects. Therefore, it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to have provided Giarretto's device with a filter as taught by Liaskos in order to prevent foreign objects from clogging the vacuum source and breaking it.

Giarretto also lacks jaw strip and fixing ring to fix the helmet to a wearer's head. However, Schamblin discloses a scalp massaging helmet with a jaw strip (16) and fixing ring (58) for securing the helmet onto a wearer's head. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Giarretto's modified device with a jaw strip and fixing ring as taught by Schamblin in order to better secure the helmet to a wearer's head and prevent the helmet from inadvertently falling off.

Giarretto further lacks a sealing packing with a surface for contacting the skin and attached to the tube. However, Crosley et al. discloses a helmet for applying negative pressure to a scalp having a flexible diaphragm/sealing package (8) with a surface for contacting the scalp (see Figure 3) and attached to a sealing tube (12). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Giarretto's modified device with a sealing package as taught by Crosley et al. for providing a better seal with the head of a wearer that adjusts as needed with the cyclic application of pressure. Although Crosley is silent as to the material of the diaphragm, absent a critical teaching and/or a showing of unexpected results from making the sealing packing from silicon, examiner contends that the material choice is an obvious design consideration to one of ordinary skill in the art and that silicon is well known and commonly used for comfortable sealing applications on human skin. See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960), in which the selection of a known material based on its suitability for its intended use supported a prima facie case of obviousness.

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Regarding claims 2 and 3, Giarretto is silent as to transparent materials. However, Liaskos discloses making the helmet from transparent plastic (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the helmet in the modified Giarretto device transparent as taught by Liaskos in order to allow an observer to monitor the scalp there though. In addition, absent a critical teaching and/or showing of unexpected results from making the filter transparent, examiner contends that it would have been an obvious design consideration to make the filter or any other element of the helmet transparent in order to monitor the scalp and operation of the device at various locations within the system.

Regarding claim 4, Giarretto discloses massage protrusions (32) on an inner side of the filter (or where the filter would be located if 30 is not considered the filter itself) for contacting the head skin.

Regarding claim 5, the language of this claim is considered intended use. The modified Giarretto device is fully capable of generating crinis by enhancing blood circulation at a portion having no hairs by the application of the vacuum and thus reads on the instant claim 5.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art cited is to show other similar helmets that treat the scalp by application of negative pressure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristen C. Matter/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771